

FILED

JUN 23 2008

PETITION FOR A WRIT OF HABEAS CORPUS BY A PERSON IN ~~THE~~ CUSTODYName CROSBY Burgess R.
(Last) (First) (Initial)RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIAPrisoner Number 96766-011Institutional Address 111 Taylor St. San Francisco, Calif 94102Telephone: (415) 346-9769 (Corvett Corrections, Inc.)UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIABURGESS RAYMOND CROSBY
(Enter the full name of plaintiff in this action.)

vs.

USA

(Enter the full name of respondent(s) or jailor in this action)

Case No. 08 3048
(To be provided by the clerk of court)PETITION FOR A WRIT
OF HABEAS CORPUSRead Comments Carefully Before Filling InWhen and Where to File

You should file in the Northern District if you were convicted and sentenced in one of these counties: Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Monterey, Napa, San Benito, Santa Clara, Santa Cruz, San Francisco, San Mateo and Sonoma. You should also file in this district if you are challenging the manner in which your sentence is being executed, such as loss of good time credits, and you are confined in one of these counties. Habeas L.R. 2254-3(a).

If you are challenging your conviction or sentence and you were not convicted and sentenced in one of the above-named fifteen counties, your petition will likely be transferred to the United States District Court for the district in which the state court that convicted and sentenced you is located. If you are challenging the execution of your sentence and you are not in prison in one of these counties, your petition will likely be transferred to the district court for the district that includes the institution where you are confined. Habeas L.R. 2254-3(b).

Who to Name as Respondent

You must name the person in whose actual custody you are. This usually means the Warden or jailor. Do not name the State of California, a city, a county or the superior court of the county in which you are imprisoned or by whom you were convicted and sentenced. These are not proper respondents.

If you are not presently in custody pursuant to the state judgment against which you seek relief but may be subject to such custody in the future (e.g., detainees), you must name the person in whose custody you are now and the Attorney General of the state in which the judgment you seek to attack was entered.

A. INFORMATION ABOUT YOUR CONVICTION AND SENTENCE

1. What sentence are you challenging in this petition?

(a) Name and location of court that imposed sentence (for example; Alameda

County Superior Court, Oakland): 450 Golden Gate Ave.
U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA S.F. CALIF 94102

Court

Location

(b) Case number, if known CB-01-6423-15-MTN

(c) Date and terms of sentence 6/23/05 8 yrs. w/ 1 yr. Sup. Release

(d) Are you now in custody serving this term? (Custody means being in jail, on parole or probation, etc.) Yes ☒ No ☐

Where?

Name of Institution:

Address: Cowell Corrections, Inc.
(Half-Way House)
111 Taylor St. S.F. Francisco, CA 94102

2. For what crime were you given this sentence? (If your petition challenges a sentence for more than one crime, list each crime separately using Penal Code numbers if known. If you are challenging more than one sentence, you should file a different petition for each sentence.)

21 USC 843(b) (Two Counts)

3. Did you have any of the following?

Arraignment:

Yes ☒ No ☐

Preliminary Hearing:

Yes ☒ No ☐

Motion to Suppress:

Yes ☐ No ☐

4. How did you plead?

Guilty ☒ Not Guilty ☐ Nolo Contendere ☐

Any other plea (specify) _____

5. If you went to trial, what kind of trial did you have? N/A

Jury ☐ Judge alone ☐ Judge alone on a transcript ☐

6. Did you testify at your trial?

Yes ☐ No ☒ N/A

7. Did you have an attorney at the following proceedings:

(a) Arraignment

Yes ☒ No ☐

(b) Preliminary hearing

Yes ☒ No ☐

(c) Time of plea

Yes ☒ No ☐

(d) Trial

Yes ☐ No ☐

(e) Sentencing

Yes ☒ No ☐

(f) Appeal

Yes ☐ No ☒

(g) Other post-conviction proceeding

Yes ☐ No ☐

8. Did you appeal your conviction?

Yes ☐ No ☐

(a) If you did, to what court(s) did you appeal?

Court of Appeal

Yes ☐ No ☒

Year: _____

Result: _____

Supreme Court of California

Yes ☐ No ☒

Year: _____

Result: _____

Any other court

Yes ☐ No ☒

Year: _____

Result: N/A

(b) If you appealed, were the grounds the same as those that you are raising in this

petition?

Yes _____ No ☒

(c) Was there an opinion?

Yes _____ No ☒

(d) Did you seek permission to file a late appeal under Rule 31(a)?

Yes _____ No ☒

If you did, give the name of the court and the result:

N/A

9. Other than appeals, have you previously filed any petitions, applications or motions with respect to this conviction in any court, state or federal? Yes _____ No ☒

[Note: If you previously filed a petition for a writ of habeas corpus in federal court that challenged the same conviction you are challenging now and if that petition was denied or dismissed with prejudice, you must first file a motion in the United States Court of Appeals for the Ninth Circuit for an order authorizing the district court to consider this petition. You may not file a second or subsequent federal habeas petition without first obtaining such an order from the Ninth Circuit. 28 U.S.C. §§ 2244(b).]

(a) If you sought relief in any proceeding other than an appeal, answer the following questions for each proceeding. Attach extra paper if you need more space.

I. Name of Court: N/A

Type of Proceeding: N/A

Grounds raised (Be brief but specific):

a. N/A

b. N/A

c. N/A

d. N/A

Result: N/A Date of Result: N/A

II. Name of Court: N/A

Type of Proceeding: N/A

Grounds raised (Be brief but specific):

1 a. N/A

2 b. _____

3 c. _____

4 d. _____

5 Result: N/A Date of Result: N/A

6 III. Name of Court: N/A

7 Type of Proceeding: N/A

8 Grounds raised (Be brief but specific):

9 a. N/A

10 b. N/A

11 c. N/A

12 d. N/A

13 Result: N/A Date of Result: N/A

14 IV. Name of Court: N/A

15 Type of Proceeding: N/A

16 Grounds raised (Be brief but specific):

17 a. N/A

18 b. N/A

19 c. N/A

20 d. N/A

21 Result: N/A Date of Result: N/A

22 (b) Is any petition, appeal or other post-conviction proceeding now pending in any court?

23 Yes _____ No ☒

24 Name and location of court: N/A

25 B. GROUNDS FOR RELIEF

26 State briefly every reason that you believe you are being confined unlawfully. Give facts to

27 support each claim. For example, what legal right or privilege were you denied? What happened?

28 Who made the error? Avoid legal arguments with numerous case citations. Attach extra paper if you

1 need more space. Answer the same questions for each claim.

2 [Note: You must present ALL your claims in your first federal habeas petition. Subsequent
3 petitions may be dismissed without review on the merits. 28 U.S.C. §§ 2244(b); McCleskey v. Zant,
4 499 U.S. 467, 111 S. Ct. 1454, 113 L. Ed. 2d 517 (1991).]

5 Claim One: Lack of Subject Matter Jurisdiction; there
6 was no implementing regulation in the indictment

7 Supporting Facts: The indictment had no implementing regulation
8 included. An individual cannot be prosecuted for any violation
9 of the Act unless he violates the required implementing regulation.
10 As such, government failed to prove subject matter
11 jurisdiction. US v. Murphy, 809 F.2d 1427 (9th Cir. 1987)

(see attached Memo & law)

12 Claim Two:

13 Supporting Facts:

14 Claim Three:

15 Supporting Facts:

16 If any of these grounds was not previously presented to any other court, state briefly which
17 grounds were not presented and why:
18
19
20
21
22

1 List, by name and citation only, any cases that you think are close factually to yours so that they
2 are an example of the error you believe occurred in your case. Do not discuss the holding or reasoning
3 of these cases:

4 See ATTACHED Memo of law

6
7 Do you have an attorney for this petition?

Yes ☐

No ☒

8 If you do, give the name and address of your attorney:

9 N/A (Pro Se)

10 WHEREFORE, petitioner prays that the Court grant petitioner relief to which s/he may be entitled in
11 this proceeding. I verify under penalty of perjury that the foregoing is true and correct.

12
13 Executed on

6/23/08

14 Date

Bryson Raymond Crosby

Signature of Petitioner

15
16
17
18
19
20 (Rev. 6/02)

Burgess Raymond Crosby
Reg. 96766-011
111 Taylor Street
San Francisco, CA 94102
Phone: (415) 346-9769

Petitioner, Pro se.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BURGESS RAYMOND CROSBY,)	
)	
Petitioner,)	CASE NO: _____
)	
vs.)	PETITION FOR WRIT OF HABEAS
)	CORPUS PURSUANT TO 28 U.S.C.
UNITED STATES OF AMERICA,)	2241; DECLARATION OF BURGESS
)	RAYMOND CROSBY.
Respondent.)	
_____)	

Comes Now, Burgess Raymond Crosby, Pro se, and moves the Court for issuance of a writ of habeas corpus. Hughs v. Rowe, 404 U.S. 5 (1980). Accord, Nadrid v. Stewart, 354 F.3d 1134, 1140, n. 4 (9th Cir. 2004). Petitioner is being held in custody in violation of the First, Fourth and Fifth Amendments of the U.S. Constitution as guaranteed by virtue of an order entered by a Court without subject matter jurisdiction.

JURISDICTION

The jurisdiction of the Court is invoked pursuant to 28 U.S.C. 2241. It is additionally submitted that three (3) factors support Petitioner's application for issuance of the writ, e.g. more fully referenced, *infra*, in the following subparts of the case, at bench:

(A) Petitioner is being held at a Community Correctional Facility in the geographical area of the United States District Court for the Northern District of California;

(B) The Judiciary Act of 1867, as noted in Fay v. Noia, 372 U.S. 391, 9 L.Ed.2d 837, 83 S.Ct. 822 (1963), and Bell v. Hill, 190 F.3d 1089 (9th Cir. 1999); and

(C) Article I, Section 9, Clause 2 of the U.S. Constitution.

FACTS AND CLAIMS

The Petitioner was indicted in the United States District Court for the Northern District of California in the case of United States v. Burgess, No. CR-01-0423-15-MJJ (USDC, ND, 2001). The District Court does not have any proof of subject matter jurisdiction that could have affirmatively supported jurisdiction upon its record. Since the record fails to contain the relevant subject matter jurisdiction, the court lacks all jurisdiction. See Bender v. Williamsport Area School District, 475 U.S. 546 (1986). Because of the habeas corpus challenging the jurisdiction of Case No. CR-01-0423-15-MJJ, the Respondent, United States of America, is required now to prove that the Court had Jurisdiction. See Thomas v. Gaskill, 315 U.S. 442, 475 (1945). Moreover, the Officers of the Court, that were attached to the criminal proceedings in the instant case, knew that the court lacked the requisite subject matter jurisdiction and remained silent regarding the fact that the government never documented the subject matter jurisdiction. The Judgment of the Court is, therefore, unconstitutional and the writ of habeas corpus must issue commanding release, forthwith. That this is based upon the fact that the indictment, original charging

instrument, is required to set forth the nexus of jurisdiction for the court.

We find that the United States District Court for the Northern District of California proceeded wholly without the requisite subject-matter jurisdiction from the onset of the case, to the completion of the proceedings, in contravention of the dictates of the Constitution. Even if Petitioner entered a guilty plea that waived all constitutional defects, his plea did not confer the court with the prerequisite jurisdiction. In United States v. Ventre, 338 F.3d 1047 (9th Cir. 1991), the Ninth Circuit stated:

"...no action of the parties can confer subject-matter jurisdiction upon a federal court. The validity of any order of a federal court depends on the court having jurisdiction over both the subject matter and parties."

Id. (Quoting) Insurance Corp., 465 S.Ct. at 701, (held in) Constantine v. Rectors, George Mason University, 411 F.3d 474, 480 (4th Cir. 2005). The lack of jurisdiction of a court, additionally, renders a judgment devoid of any validity, equating to a missing element and, as such, is subject to the provisions of 28 U.S.C. 2241. See, e.g. Davis v. Crabtree, 10 F.Supp.2d 1136 (USDC, D.OR., 1998)(quoting) Triestman v. United States, 124 F.3d 361. See also In re Dorsainvil, 119 F.3d 245, 251 (3rd Cir. 1997); Maybeck v. United States, 23 F.3d 888 (4th Cir. 1997).

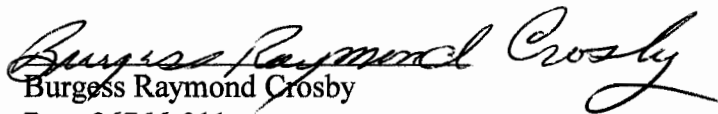
The certainty is that absent subject-matter jurisdiction, a case of actual innocence is presented. With that stated, the habeas corpus must be granted. Petitioner is entitled to relief under section 2241 because of the inadequate and ineffectiveness of 28 U.S.C. 2255 provisions. Lack of jurisdiction constitutes lack of all of a court's jurisdiction.

CONCLUSION

For the foregoing reasons, the writ of habeas corpus must be issued, commanding
Petitioner's release from custody, forthwith.

Dated this 23 day of June, 2008.

Respectfully submitted,

A handwritten signature in cursive script, reading "Burgess Raymond Crosby".

Burgess Raymond Crosby
Reg. 96766-011
111 Taylor Street
San Francisco, CA 94102
(415) 346-9769

Petitioner, Pro se.


CERTIFICATE OF SERVICE

The undersigned hereby certifies he did personally deliver by hand the forgoing Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. 2241, by handing it to an agent or the proper party at the following address:

Clerk of the Court
U.S. District Court
Northern District of California
450 Golden Gate Avenue
San Francisco, CA 94102
(original plus two)

United States Attorney's Office
U.S. Attorney
Federal Building
450 Golden Gate Avenue
San Francisco, CA 94102
(One copy)

all on this 23 day of June, 2008, and declare that the foregoing is true and correct under the penalty of perjury per 28 U.S.C. 1746.


BURGESS RAYMOND CROSBY
111 Taylor Street
San Francisco, CA 94102

Petitioner, Pro se.

CIVIL COVER SHEET

C08-3048PJH

JS 44 (Rev. 12/07) (and rev 1-16-08)

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO OF THE FORM.)

I. (a) PLAINTIFFS

BURGESS RAYMOND CROSBY

(b) County of Residence of First Listed Plaintiff
(EXCEPT IN U.S. PLAINTIFF CASES)

SAN FRANCISCO

(c) Attorney's (Firm Name, Address, and Telephone Number)

BURGESS RAYMOND CROSBY

Reg. # 96766-011

111 TAYLOR STREET

SAN FRANCISCO, California 94102 (PRO SE)

DEFENDANTS

UNITED STATES OF AMERICA

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known) U.S. ATTORNEY'S OFFICE

450 GOLDEN GATE AVE. (FEDERAL BLDG.)

SAN FRANCISCO, California 94102

E-filing

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus—Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. 2241

Brief description of cause:

JOA lack of JURISDICTION ID CR-01-0423-15-MJT

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE".

IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2) (PLACE AND "X" IN ONE BOX ONLY)

☒ SAN FRANCISCO/OAKLAND☐ SAN JOSE

DATE

6/23/08

SIGNATURE OF ATTORNEY OF RECORD

Burgess Raymond Crosby pro se

Court Name: U.S. District Court, NDCA
Division: 3
Receipt Number: 34611020456
Cashier ID: sprinka
Transaction Date: 06/23/2008
Payer Name: BURGESS CROSBY

WRIT OF HABEAS CORPUS
For: BURGESS CROSBY
Amount: \$5.00

CASH
Amt Tendered: \$5.00

Total Due: \$5.00
Total Tendered: \$5.00
Change Amt: \$0.00

08-3040PJH

Checks and drafts are accepted
subject to collections and full
credit will only be given when the
check or draft has been accepted by
the financial institution on which
it was drawn.